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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,610	08/01/2003	Ajit Karmaker	JPP-1230CIP3A	4910
34214	7590	11/30/2005	EXAMINER	
PENTRON CORPORATION 53 NORTH PLAINS INDUSTRIAL ROAD WALLINGFORD, CT 06492			O'CONNOR, CARY E	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/633,610	Applicant(s) KARMAKER ET AL	
	Examiner Cary E. O'Connor	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-26,29-48 and 51-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 95-99 is/are allowed.
- 6) ☒ Claim(s) 1-3,6-26,29-48,51-94 and 100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10305</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

It is noted that the amendment does not include claims 69 and 70. This Office action is based on claims 69 and 70 as originally filed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 69 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 69 contradicts claim 67.

Claims 20, 63 and 84 contain the trademark/trade name Teflon®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a particular material and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-11, 15-26, 29-33, 37-46, 89-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manocha (5,595,486) in view of Kert (6,010,335) and Johnson (4,758,156). Manocha shows an endodontic post comprising a post section comprising a rigid endodontic section 20 and a tip section 12. The tip section is surrounded by a filler cone 50. Manocha does not disclose that the tip section is flexible or that it has at least one protrusion extending outwardly therefrom for engaging the filler cone. Kert shows an endodontic post where the tip section is flexible. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tip section of Manocha flexible, as taught by Kert, so that the tip section can adapt to the curvature of the root. Johnson shows an endodontic post comprising a post section comprising a rigid endodontic section and a tip section. The tip section is surrounded by a filler cone 28. The tip section comprises at least one protrusion 20A extending outwardly and disposed at various points along the tip section for engaging the filler cone. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tip section of Manocha with at least one protrusion, in view of Johnson, in order to provide adhesion surfaces for the filler cone. As to claims 4 and 27, Manocha discloses the claimed invention except for the carrier

extending the full length of the filler cone. It would have been an obvious matter of design choice to form the carrier so that extends the full length of the filler cone, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). As to claims 6 and 29, Johnson does not disclose a single protrusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide only a single protrusion, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). As to claims 9 and 32, note that the tip section of Manocha is narrower in diameter than the diameter of the endodontic portion. As to claim 10, note the supracoronal portion 22 of Manocha. As to claims 11 and 33, note that the post of Manocha may be made of stainless steel, plastic, titanium or other biocompatible material (column 2, lines 62-64). As to claims 15, 17, 37 and 39, note that the filler cone of Manocha may comprise gutta percha (column 2, lines 4-5). As to claims 24 and 46, the filler cone of Kert may include an anti-microbiological agent to prevent the risk of inflammation and infection. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the filler cone material of Manocha with an antibiotic, in view of Kert, in order to prevent the risk of inflammation and infection. As to claims 16, 18-23, 38, 40-45, without a showing of criticality, the specific material used for the filler cone is considered to have been an obvious design choice, to one of ordinary skill in the art.

Claims 12-14, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manocha (5,595,486) in view of Kert (6,010,335) and Johnson (4,758,156) as applied to claim 11 above, and further in view of Goldberg (4,894,012). Johnson does not set forth the claimed materials used to form the shaft. Goldberg discloses fiber or filler reinforced materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the shaft of Johnson of the materials disclosed by Goldberg, in order to improve structural integrity.

Claims 47, 48, 51-54, 58-65, 67-75, 79-87, 89-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manocha (5,595,486) in view of Johnson (4,758,156). Manocha shows an endodontic post comprising a post section comprising a rigid endodontic section 20 and a tip section 12. The tip section is surrounded by a filler cone 50. Manocha does not disclose that the tip section has at least one protrusion extending outwardly therefrom for engaging the filler cone. Johnson shows an endodontic post comprising a post section comprising a rigid endodontic section and a tip section. The tip section is surrounded by a filler cone 28. The tip section comprises at least one protrusion 20A extending outwardly and disposed at various points along the tip section for engaging the filler cone. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tip section of Manocha with at least one protrusion, in view of Johnson, in order to provide adhesion surfaces for the filler cone. As to claims 51 and 71, Johnson does not disclose a single protrusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide only a single protrusion, since it

has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). As to claims 53 and 73, note the spherical protrusions 44 of Johnson. As to claims 54 and 75, note that the post of Manocha may be made of stainless steel, plastic, titanium or other biocompatible material (column 2, lines 62-64). As to claims 58, 60, 79 and 61, note that the filler cone may comprise gutta percha (column 2, lines 4-5). As to claims 59, 61-65, 80, 82-87 and 100, without a showing of criticality, the specific material used for the filler cone is considered to have been an obvious design choice, to one of ordinary skill in the art. As to claim 91, note that Manocha discloses injecting a sealing material into the canal prior to insertion of the post (column 4, second paragraph).

Claims 55-57, 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manocha (5,595,486) in view of Johnson (4,758,156) as applied to claims 54 and 75 above, and further in view of Goldberg (4,894,012). Manocha does not set forth the claimed materials used to form the shaft. Goldberg discloses fiber or filler reinforced materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the shaft of Johnson of the materials disclosed by Goldberg, in order to improve structural integrity.

Claims 66 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manocha (5,595,486) in view of Johnson (4,758,156) as applied to claims 59 and 80 above, and further in view of Kert (6,010,335). The filler cones of Manocha or Johnson do not include the claimed agents. The filler cone of Kert may include an anti-microbiological agent to prevent the risk of inflammation and infection. It would have

been obvious to one of ordinary skill in the art at the time the invention was made to provide the filler cone material of Manocha with an antibiotic, in view of Kert, in order to prevent the risk of inflammation and infection.

Allowable Subject Matter

Claims 95-99 are allowed.

Response to Arguments

Applicant's arguments filed September 22, 2005 have been fully considered but they are not persuasive. Applicant argues that the carrier 10 of Manocha extends the entire length of the filler cone. The previous Office action mistakenly identified the carrier of Manocha by reference numeral 10. The carrier is identified by reference numeral 12. This carrier does not extend the entire length of the filler cone.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cary E. O'Connor
Primary Examiner
Art Unit 3732

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